

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.11692 of 2002 (O&M)

Date of Decision:02.06.2017

Shiv Charan

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. B.S. Patwalia, Advocate for the petitioner.

Mr. R.K. Doon, A.A.G. Haryana.

Mr. Kanwal Goyal, Advocate for respondent No.4.

P.B. BAJANTHRI J. (Oral)

Petitioner is aggrieved by the non consideration of his name for appointment to the post of Head Master pursuant to the advertisement issued on 14.12.2001 and further sought for direction for consideration of his name for selection and appointment. He has also challenged the rejection of his candidature (Annexures P-6 and P-9).

Learned counsel for the petitioner submitted that petitioner was appointed as a Math Master on 23.5.1983. He has acquired B.Ed qualification in the year 1999. On 14.12.2001, the respondent-Selecting Authority advertised for the post of Head Master while reserving 4 posts for Physically Handicapped Persons. Petitioner is one of the candidate for recruitment to the post of Head master under Physically Handicapped Persons category. Petitioner's candidature has been rejected on the ground that petitioner do not possess eight years' of experience after acquisition of B.Ed qualification in the year 1999 with reference to the last date prescribed

in the advertisement dated 14.12.2001. Learned counsel for the petitioner

submitted that if the date of appointment of the petitioner is taken into consideration, petitioner fulfills the experience qualification of eight years as stipulated for the purpose of appointment to the post of Head Master. It was further submitted that rules do not provide for gaining eight years of experience after acquisition of B.Ed examination. Further rule is silent whether acquisition of eight years of experience is after passing of B.Ed examination. Therefore, rejection of the petitioner's candidature is highly arbitrary and illegal.

In support of petitioner's case, learned counsel for the petitioner relied on the judgment passed by the Supreme Court in the case of **Anil Kumar Gupta and others v. Municipal Corporation of Delhi and others;** 2000 (1) SLR 303. Para 20 of the said judgment reads as under:

“20.We may at the outset state that the provision regarding experience speaks only of “professional experience” for two years and does not, in any manner, connect it with the degree qualification. In our view, the case on hand is similar to Subhash v. State of Maharashtra (1995 Supp. (3) SCC 332) where, while considering Rule 3(e) of the relevant Recruitment Rules, namely, the Maharashtra Motor Vehicles Department (Recruitment) Rules, 1991, this Court pointed out that the rule 3(e) which required one year experience in registered Automobile Workshop did not make any difference between acquisition of such experience prior to or after the acquisition of the basis qualification.”

Learned counsel for the petitioner submitted that in view of the decision of the Supreme Court read with rules of recruitment governing the post of Head Master which is silent in respect of gaining eight years of experience, petition is liable to be allowed.

Per contra, learned counsel for respondent No.4 submitted that

very rule relating to the selection and appointment to the post of Head Master which is subject matter of this petition was considered by a Division Bench in CWP No.18414 of 2008; decided on 23.10.2008; **Chandrima Kaushal** v. **State of Haryana and others**; 2009 (1) SCT 648. This Court was pleased to held as under:

“5. We have given out thoughtful consideration to the submissions made by the counsel for the petitioner but are unable to accept the same. Perusal of the essential qualifications, as called for in the advertisement and as provided under the statutory rules (reproduced above) clearly indicate that the essential educational qualification is B.A./B.Sc./B.Sc./B.Com. Or qualification recognised by the Haryana Education Department and B.T./B.Ed./SSTTC/SAV/LT/Diploma in Basic Education or one year's Teachers Training for graduate at University or Post-Graduate Training College. Preference will be given to M.A./M.Sc./M.Com. Or equivalent Post-Graduate qualifications recognised by the Department. Eight years teaching experience as Master in Govt. recognised Senior Secondary/High/Middle Schools. Teachers Training Institution has also been provided as an essential experience for the general category candidates to which the petitioner belongs. It has not been disputed by the counsel for the petitioner that the essential qualification for appointment to the post of Master is Graduation with B.Ed. The petitioner obtained her degree of B.Ed. on 29.9.2000. The advertisement, in pursuance to which

*the petitioner submitted her application for appointment to the post of Head Mistress, is dated 7.12.2006. The experience has, thus, to be counted till the last date of submission of the application, which has been mentioned as 6.1.2007. The above position clearly indicates that the petitioner acquired her B.Ed. qualification in September, 2000 and the cut off date for considering the eligibility was 6.1.2007 and therefore, the petitioner does not fulfil the requirement of the experience on the post of Master, which is of 8 years. The teaching experience that too on the post of Master can only be calculated from the date when the petitioner acquired the basic qualification for being appointed on the post of Master i.e. B.Ed. Any experience gained prior to the acquisition of the essential qualification of B.Ed. for being appointed to the post of Master, cannot be taken into consideration. Further the period from 1.4.2001 to 17.2.2005 where the petitioner worked as lecturer in Shri Brahamrishi Vidya Mandir after acquiring the qualification of B.Ed., can also be not taken into consideration for calculating the experience as the same is not on the post of Master. Assuming this period is also counted towards experience then, also since the petitioner has acquired her B.Ed. qualification in September, 2000 and the cut off date for consideration for eligibility is 6.1.2007, the petitioner does not fulfil the required experience. The counsel for the petitioner has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Anil Kumar Gupta and others v.***

Municipal Corporation of Delhi and others etc. 2000 (1) SCT 731; JT 1999 (9) SC 231, to contend that the experience gained before the publication of the result or before issuance of the experience certificate cannot be overlooked and the experience gained should be counted towards the experience for eligibility.

We have gone through the judgment referred to above and are of the view that the same would not help the claim of the petitioner as the limited question in the case was as to whether the experience gained after campus selection i.e. after final examination in BE was over and before publication of result of BE examination/or marks certificate, could be treated as 'Professional experience'. In the present case, the petitioner has not pleaded as to when she had appeared in the final examination of B.Ed. nor has it been pleaded that by counting this experience as required experience for the post of Master i.e. 8 years would be completed. Therefore, the judgment is not applicable to the facts of the present case and no benefit can be granted to the petitioner."

Further, he has also relied on judgments rendered in the case of **Sheshrao Janglaji Bagde** v. **Bhaiyya**; 1991 (1) SCT 120 and **Bhupender Singh** v. **State of Haryana and another**; 2016 (2) SCT 128 to contend that this Court as well as Supreme Court held that experience is required to be gained after passing of relevant examination.

Heard learned counsel for the parties.

Question for consideration in the present petition is whether

eight years' of experience is required for the purpose of selection and appointment to the post of Head Master as a Master in Senior Secondary/High/Middle Schools/ Teachers Training Institution read with after acquisition of B.Ed qualification or in the absence of B.Ed qualification, experience gained in as a Master in the recognized institution.

Before adverting to the issue involved in the present case, it is relevant to extract relevant rules of recruitment governing the post of Head master which reads as under:

4. Headmaster of High School / Junior Specialist / Programme Assistant	(i) B.A./B.Sc./B.Com or equivalent qualification recognized by Haryana Education Department. Preference will be given to M.A. / M.Sc./ M. Com or equivalent Post-Graduate qualifications recognized by the Department. (ii) B.T. / B.Ed / SSTC / SAV / LT / Diploma in basic Education or one year Teacher's Training for graduate at University or Post-Graduate Training College. (iii) Eight years teaching experience as Master in Govt. recognized Senior Secondary / High / Middle Schools/ Teachers Training Institution relaxable to four years for the Emergency Commissioned Officer but the total teaching experience and service in the Army should be Eight Years.	By Promotion;- (i) Eight years experience as Headmaster of Middle School or Master; or (ii) B.T. / B.Ed. and eight years experience as Sanskrit Teacher / Hindi Teacher or Punjabi Teacher. By transfer or deputation:- (i) Two years experience as Headmaster of High School. (iii) Knowledge of Hindi Upto Matric standard.
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Having regard to the language in the rules of recruitment, rules are silent relating to gaining of eight years of experience whether is it after passing of B.Ed examination or even the experience gained without B.Ed. examination. Therefore, one cannot interpret that acquisition of eight years of experience must be after acquisition of B.Ed. qualification. Since there is

no ambiguity in the rules, the same cannot be interpreted that acquisition of eight years of experience is after acquisition of B.Ed. qualification. The cited decisions are distinguishable in view of the judgment of the Supreme Court in the case of Nair Service Society vs T.Beermasthan & Ors; 2009 (5) SCC 545. Para 48 of the said judgment reads as under:

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Government can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

Moreover, time and again, Supreme Court has held that Court can interpret particular rule if there is any ambiguity. In the present case, there is no ambiguity in respect of prescription of qualification for the post of Head Master. Therefore, this Court cannot read that eight years of experience is to be taken into consideration only after passing B.Ed. examination.

Accordingly, Annexures P-6 and P-9 are set aside. Concerned respondent is hereby directed to re-consider the petitioner's claim for selection and appointment to the post of Head Master notionally within a period of three months from today.

Petition stands allowed accordingly.

At this stage, learned counsel for respondent No.4 vehemently contended that in the advertisement it is stipulated that acquisition of eight years of experience is subsequent to acquisition of B.Ed. qualification. Even

if such clause is imposed in the advertisement, it is contrary to the rules of recruitment governing the post of Head Master. As long as rule is not appropriately amended to the extent that eight years of experience is to be considered after acquisition of B.Ed qualification. The exiting rule is to be read as it is. Hence, this contention of the learned counsel for respondent No.4 is hereby rejected.

02.06.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No